

APPEAL NO. 010074

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 18, 2000. The hearing officer determined that the respondent's (claimant) compensable (right hand) injury included the condition of "mallet fingers" to the 4th and 5th digits of the claimant's right hand.

The appellant (carrier) appealed, reciting medical evidence from the CCH that supports its position. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant was a commercial refrigerator repairman and the parties stipulated that the claimant sustained a compensable injury to his right hand while uncoupling a trailer on _____ (all dates are 1999 unless otherwise noted). At issue is whether that injury extended to a condition of "mallet fingers" of the 4th and 5th digits. It is undisputed that the claimant sustained a football injury in 1978 when someone stepped on his right little finger and that the claimant had a knot on his little finger. The degree of preexisting extension the claimant had on the 4th and 5th fingers is in dispute.

After the claimant's injury, he was seen at (clinic), which did not note the mallet finger condition but did eventually refer the claimant to Dr. K, a hand specialist who noted the mallet finger condition. Dr. K's reports are subject to differing interpretations. In a progress report of November 30, Dr. K wrote:

I further told him that even under the best of circumstances mallet fingers may not heal with complete extension ability at the DIPJ. Therefore this is either a residual from a prior time or it may, in fact, be his ultimate end result from this episode.

Dr. H, another hand specialist, in a report of August 31, 2000, is of the opinion that the claimant's current medical condition "is the result of his new work-related injury" on _____. The opinion of other doctors are equally divided and subject to differing interpretations. Much of the argument at the CCH dealt with whether the claimant should have surgery to his 4th and 5th fingers, an issue not before the hearing officer.

In any event, the medical evidence was conflicting and subject to different interpretations and the hearing officer had the benefit of seeing the claimant's hand. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the

conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This includes medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Robert W. Potts
Appeals Judge